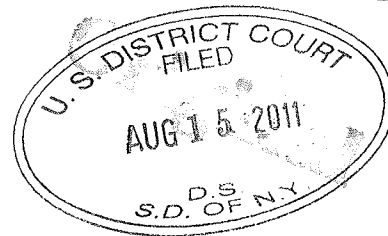


17dkdata

Argument



1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA,

5 v.

11 CR 102 (LAK)

6 VIKRAM DATTA,

7 Defendant.

DOC #

32

8 -----X

New York, N.Y.

July 13, 2011

4:13 p.m.

9 Before:

10 HON. LEWIS A. KAPLAN,

11 District Judge

12 APPEARANCES

13 PREET BHARARA,

14 United States Attorney for the
15 Southern District of New York

16 PETER M. SKINNER

17 HOWARD SETH MASTER

18 Assistant United States Attorney

19 WHITE & WHITE

20 Attorneys for Defendant

21 DIARMUID WHITE

22 ALSO PRESENT: Richard Reinhardt, IRS

17dkdata

Argument

1 (In open court)

2 THE COURT: Good afternoon, everyone.

3 Mr. White, I'll hear you.

4 MR. WHITE: Your Honor, on the motion to transfer the
5 case to the Southern District of Texas, I am not going to
6 reiterate what was in my memorandum of law and reply memorandum
7 of law, because I know your Honor has read them.

8 I thought maybe I could just elaborate on three
9 particular Platt factors. Your Honor, the briefs of the
10 parties, it being an adversary system, we tend to argue from
11 extremes sometimes; and in the government's memorandum of law,
12 they seek to tie this case to New York in whatever way they
13 can, and I've tried to counter that in my reply.

14 THE COURT: By trying to tie it to Laredo in whatever
15 way you can?

16 MR. WHITE: That's the adversary system, your Honor.

17 THE COURT: Right.

18 MR. WHITE: But I thought an eloquent document, in
19 support of my position is the complaint itself. You know, it's
20 a 23-page, single-spaced complaint, and not until page 21 in
21 the penultimate paragraph, does the government allege, fairly
22 briefly, that Mr. Datta obtained perfume from dealers in New
23 York City and wired \$100,000 to those dealers. And that is in
24 the complaint, I assume, Judge, as a factual basis to have
25 venue in the Southern District and probably establish venue for

17dkdata

Argument

1 purposes of the complaint.

2 But it goes to show how inconsequential that fact is
3 in determining whether the location of the events in this case
4 really occur in New York or in Laredo. And if you go back to
5 page 6 of the complaint, where the government talks about the
6 investigation of Vikram Datta, they lay it out there as well as
7 I could in my memorandum why the events of this case are
8 centered in Laredo:

9 The perfume that was sold was sold from Laredo into
10 Mexico; the receipt of the payments by wire, cash or check, was
11 received in Laredo; the wiretaps occurred in already; the banks
12 where this money was deposited and where regulatory filings
13 were or were not made were in Laredo; the searches and seizures
14 all occurred in Laredo; the conduct of the employees of
15 Mr. Datta, which in the complaint -- the complaint alleges the
16 co-conspiracies all occurred in Laredo. I don't think it
17 couldn't be clearer than Laredo is the nerve center of this
18 case. And I say in my motion, that the connection to New York
19 is negligible, your Honor. And I don't see any fact to change
20 that.

21 I think the government's position is that the
22 investigation occurred out of the Southern District, and that's
23 why the case should remain here. But that's an insubstantial
24 reason, your Honor.

25 I wanted to address the location of relevant

17dkdata

Argument

1 documents.

2 THE COURT: Why is that so insubstantial? Platt makes
3 relevant the expenses to be incurred by the parties, and it is
4 to some degree a convenience test, not perfectly identical to,
5 but similar to that, that applies in a civil case under 1404.
6 And what you've got here is a large government investigation
7 with a prosecutorial team, and a transfer to Laredo means
8 uprooting the whole thing and moving halfway across the
9 country.

10 MR. WHITE: Your Honor, that is a concern. I don't
11 think it is an important concern under Rule 21(b) because the
12 purpose of Rule 21(b) is fairness to the defendant, your Honor,
13 by trying him in a place remote from where he's located.
14 That's why we have a Rule 21(b). I cited to you Judge Griesa's
15 observation that the government brings a case in a district
16 where they really shouldn't have brought it because all the
17 acts were someplace else; and then they argue, well, look at
18 the manpower we have here, and we've started this. That's a
19 circular argument, your Honor, that I just don't think should
20 count heavily in the government's favor, that because they
21 brought it here, well, it should stay here.

22 And if you look at --

23 THE COURT: But that is the default principle. Unless
24 the party seeking the transfer can show substantial reason for
25 moving it, the fact that it was brought here actually does, if

17dkdata

Argument

1 not control, certainly count for something material.

2 MR. WHITE: Well, Judge, there's disagreement over
3 that. The cases I cite in my reply brief -- and right in
4 Miller, by the way, they debunk that theory, saying this rule
5 is fairness to the defendant. It turns it upside down if you
6 say it should be presumed to be in a district that it was
7 brought.

8 In one of the cases cited in my brief is United States
9 versus Hanley, where I think it was Judge Batts said that
10 inconvenience to the government is not, in the cases, given
11 much weight. And she cites to cases; one is United States
12 versus Gruberg. And I looked at that this morning, and Gruberg
13 cites a case going all the way back to 1960, before Platt. And
14 the judge then, whose name escapes me -- I wasn't familiar with
15 the district court judge, but a Southern District judge, said
16 the same thing that Judge Griesa says he says, you know -- the
17 most compelling argument the government has is, gee, they put a
18 lot of work into it in this district; but he says, I'm not
19 going to give that any weight because they shouldn't have
20 brought it here in the first place.

21 They were aware of the facts that I am relying on to
22 say venue -- I mean venue should be transferred to Laredo or
23 the Southern District of Texas. They were aware of it when
24 they brought the case here, your Honor. And now for them to
25 rely on that and say, hey, we brought it here, and we're ready

17dkdata

Argument

1 to try it here, Judge, I don't see the substance of that. You
2 say that's a substantial, almost a controlling reason? I don't
3 see the substance of it at all, your Honor.

4 THE COURT: I don't mean to suggest it's almost
5 controlling, but we don't litigate transfer motions on the
6 criminal side all the time -- they're pretty unusual -- but
7 many of the factors are very similar to the civil side. And
8 certainly the policies to some degree are comparable, not
9 completely but to some degree, and on the civil side, the
10 principle is that normally the plaintiff's choice of forum is
11 entitled to a great deal of weight. But the extent to which
12 it's entitled to weight is undermined the more remote the
13 plaintiff's chosen forum is to what's really going on.

14 Now, the plaintiff's choice -- I'm not sure if it's
15 ever denied any weight but certainly the degree of the weight
16 diminishes. I'm not sure you're really saying anything
17 different, right?

18 MR. WHITE: Not really, not really.

19 But I don't see -- I just don't see the ties to
20 New York at all. They're really insubstantial. So if the
21 government had -- you decided a Rule 21(b) motion in Stein.
22 The government brought that here, but there was a lot going on
23 in New York and I think that was probably the pivotal point
24 that you decided that motion on it's ephemeral; they shouldn't
25 have brought it here.

17dkdata

Argument

1 THE COURT: It's not like nothing; the business
2 started here.

3 MR. WHITE: It did not start here.

4 THE COURT: He lived here, the family was here.

5 MR. WHITE: Those are insubstantial. The business did
6 not start. Mr. Datta had many, many jobs in New York, and he
7 broke into the perfume business in New York but then he moved
8 to Laredo ten years ago and he started a whole new business
9 there. It's not like he transferred his business. That's just
10 not true.

11 THE COURT: Isn't there evidence that he was back and
12 forth in the year two or three before the indictment came down,
13 and that the family was still here?

14 MR. WHITE: Yes, your Honor, yes. But he lived in
15 Laredo and he worked in Laredo. His family, in order that his
16 two daughters could continue their education in New York
17 because the family believed the schools were better here than
18 Laredo, the family stayed here. He lived and worked in Laredo.
19 Of course, as a father and a husband, he came to New York to
20 see them. But what does that have to do with the case? What
21 does that have to do with the case?

22 THE COURT: You say he lived and worked in Laredo.

23 MR. WHITE: Yes.

24 THE COURT: To this day, his driver's license is
25 New York, right, to this very day, not Texas?

17dkdata

Argument

1 MR. WHITE: Yes.

2 THE COURT: And until, what is it, nine months or a
3 year ago the family was here and he was really residing in both
4 places for all practical purposes; isn't that true?

5 MR. WHITE: Not really, Judge. He wasn't residing in
6 both places. He was visiting here, he lived in Laredo, he
7 worked in Laredo. It's a big operation he had down there.
8 That's all he was doing, a guy who he was working seven days a
9 week in Laredo. But what does it matter he didn't change his
10 driver's license to Texas? What does that have to do with the
11 case? It doesn't. I mean, Judge, this is grasping at straws.
12 That's the best the government has as to why this case belongs
13 in New York. What about the crimes? Where were the crimes
14 committed? Isn't that what it should be, not these peripheral
15 ephemeral tidbits?

16 THE COURT: But you're making assumptions there too, I
17 think, really. The government alleges very large quantities of
18 these perfume-for-dollar and perfume-for-peso transactions.
19 The guy is dealing with 17 perfume suppliers in New York. I
20 take it that's not really controverted.

21 Now, whether his business was 10 percent, 50 percent
22 or 80 percent black market peso exchange, some proportion of
23 what he's buying in New York, assuming the allegations of the
24 indictment are true, is for the purpose of carrying out the two
25 conspiracies alleged in the complaint and at least some of

17dkdata

Argument

1 those purchases, at least in some part, are overt acts in
2 furtherance of the conspiracy committed in this district, no?

3 MR. WHITE: They may be overt acts, your Honor. But
4 as we know, overt acts, it doesn't take much to constitute an
5 overt act.

6 THE COURT: I know, but it's good enough for venue.

7 MR. WHITE: It is good enough for venue. If that were
8 established, it's probably good enough for venue for the
9 conspiracy count.

10 But, Judge, in terms of what a jury is going to have
11 to decide in this case, the fact that he ordered the perfume
12 from New York, as he did from Florida and as he did from
13 Los Angeles, it's so inconsequential to this case. As I say in
14 my motion, we could stipulate to it in a one-page stipulation.
15 What does it say about the crime committed, that -- it's
16 irrelevant where he got the perfume from. What the crime is,
17 what they have to prove is, what he did with the perfume,
18 selling it as part of this so-called black market peso
19 exchange. Where he got it from, Judge, it's almost immaterial.
20 For that to have the weight to keep it here, I just don't see
21 it at all, your Honor. I think the government has gone through
22 their case and their complaint and any time they see New York,
23 they've tried to make an argument, but it really has nothing to
24 do with the case that's going to be tried.

25 THE COURT: OK, anything else?

17dkdata

Argument

1 MR. WHITE: Yes.

2 THE COURT: Sure.

3 MR. WHITE: Let me talk, as a criminal defense lawyer
4 trying to figure out how to try this case, about some of the
5 practicalities. These are just two Platt factors that I didn't
6 elaborate on in written -- I didn't really make clear what my
7 thinking is in the written submissions.

8 The location of the documents: There's a lot of
9 documents, 65,000 pages of documents. It was made available
10 through discovery --

11 THE COURT: That used to be a lot of documents.
12 That's not a lot of documents anymore.

13 MR. WHITE: I guess.

14 It was made available on one CD. Now, these
15 documents, a lot of them are invoices, sales receipts, cash
16 receipts, just the government, when they searched the
17 warehouse, they basically took out all the records and I have
18 them now on a CD in PDF form. But I really need the staff of
19 the business to explain documents to me, what they are.
20 Mr. Datta, he really didn't engage in the day-to-day
21 transactions himself; he was running around opening stores, he
22 was dealing with suppliers, he was dealing with wholesale
23 customers. But the actual transaction was done by staff,
24 bookkeepers, salespeople in Laredo. Whenever I ask him about a
25 particular transaction he tells me, oh, you've got to go ask

17dkdata

Argument

1 so-and-so.

2 I've been on trial in this courthouse where the
3 government introduces a lot of documents that are somehow seen
4 in discovery but I'm never sure which ones they're going to
5 introduce into evidence and I'm trying to figure out what it
6 is. I need to have the staff of his business nearby so if
7 things come up during trial about a particular transaction --
8 look at this suspicious deposit, what was this -- I can go to
9 them at night or over the weekend and say, explain this
10 transaction. It's a very practical consideration, Judge.
11 Before all the electronic discovery, that's why this is a Platt
12 factor -- access and location to the records, where will the
13 records be that --

14 THE COURT: Let me ask you a practical question about
15 this. You've got a CD with 65,000 PDFs on it. Now, for a
16 couple of bucks, you could have two CDs, you could have eight
17 CDs, you could have 20. Long before you get to trial you could
18 have those CDs in the hands of all these people in Laredo, whom
19 you might want to consult.

20 So when at 7:00 o'clock during trial, in the evening,
21 you have a question about document XXX, you pick up the phone,
22 you say, put the CD in your computer and look at this page,
23 explain it to me. What is the big deal?

24 MR. WHITE: That's possible. It's just not as
25 effective as sitting down with a bookkeeper over her desk and

17dkdata

Argument

1 having her explain the document to me, going to get another
2 book or ledger or something, to show me where this was entered,
3 and having real access to those documents. What you describe
4 is theoretically possible. It's difficult to make telephone
5 calls to another time zone after work.

6 THE COURT: It's one hour difference.

7 MR. WHITE: Excuse me?

8 THE COURT: One hour difference, isn't it?

9 MR. WHITE: Yes. But, your Honor, this is, I think,
10 what -- I'm talking about real access to the documents, so I'm
11 on the same page during trial, I can get quick answers to
12 documentary evidence that the government is going to introduce.

13 Just one other Platt factor I want to talk about, your
14 Honor, if you'll indulge me: These are any other special
15 circumstances. When I first was engaged in this case, I went
16 down to Laredo and I walked around and I saw the stores,
17 Mr. Datta's stores and all the other stores along the border.
18 I saw thousands of people coming across the international
19 bridge from Nuevo Laredo into Laredo. And as a matter of fact,
20 I walked across the bridge and came back just to see it. And I
21 learned a little bit about Laredo.

22 Before I had gone down there, I had tried to learn
23 from reading, I had Google-mapped Laredo to try to figure it
24 out, and I couldn't get a fix on it until I got down there and
25 actually saw this. And I was very impressed by all these

17dkdata

Argument

1 people coming back across the bridge.

2 When I came back, I met about the prosecutors and I
3 talked about Mr. Datta and his business and how there's a
4 tremendous amount of retail sales along the border. And they
5 said, come on, how does a guy have five perfume stores in
6 Laredo on the border, you know, how could that be? And to a
7 New Yorker, that's difficult to fathom; it might look
8 suspicious. The government could argue to the jury here,
9 what's this guy from New York going down to Laredo and opening
10 up five perfume stores? What's that all about if it's not to
11 launder money for a drug cartel?

12 An Assistant U.S. Attorney assigned to the Laredo
13 office would never make that argument to a jury in Laredo
14 because those people understand the border commerce. It's been
15 going on for 150 years Laredo. After the annexation of Texas,
16 Laredo boomed, and it's all been people coming from Mexico,
17 coming across the border to shop in these stores in tremendous
18 volume on weekends, Christmas, Cinco de Mayo, and bringing over
19 U.S. currency, for a lot of reasons, and not just recently,
20 going all the way back 150 years.

21 Now, they're fearful of Mexican drug cartels; then it
22 was banditos; there were security problems. There was better
23 product available in the United States, it was available at
24 better prices, they didn't have to pay high duties, they
25 preferred -- they didn't trust the banks because of inflation

17dkdata

Argument

1 with the pesos, they had to pay high tariffs. And for all
2 these reasons, these border stores have boomed and have boomed
3 for over 100 years.

4 But what is a New York juror -- how can they relate to
5 that the way a Laredo juror would? It's important, to show --
6 we are going to establish at trial that he ran a legitimate
7 business, your Honor. But it's not going to look that way to a
8 New York jury because it sounds strange as hell that a guy
9 would have five stores right on the border there, unless he had
10 some pernicious purpose.

11 So when they talk about special circumstances under
12 Platt, that's an important -- it's probably the one factor that
13 motivated me to make this motion, your Honor. Trying this case
14 in New York would be very difficult, to try to understand
15 Mr. Datta's business and to understand that he is not de facto
16 a criminal because he set up on the border with Mexico where
17 there's a lot of drug cartels.

18 Your Honor, the other Platt factors I've discussed in
19 my memorandum of law, your Honor, and I'm not going to
20 reiterate what I have there. But if you take all of these
21 factors, your Honor, and on balance ask the question: What is
22 fair -- fair to the defendant -- and what's in the interests of
23 justice? In the interests of justice, your Honor, not in the
24 interest of convenience so much but in the interests of
25 justice, I think this case in fairness really should be

17dkdata

Argument

1 transferred to Texas.

2 THE COURT: That's what I don't understand, to tell
3 you the truth. If you say that the conditions in Laredo are so
4 different, why can't you present evidence of that?

5 MR. WHITE: It could be done, it could be done. It's
6 just not as effective. It's not as effective when jurors
7 understand it, just like I used the analogy trying to sum up to
8 or try a case in Laredo about a metropolitan mass transit
9 system.

10 THE COURT: We have jurors in this courthouse all the
11 time who hear criminal cases in which witnesses get on the
12 stand and say that you've just heard this tape recording and
13 when the witness was talking about the girls in the Cadillacs,
14 he was talking about the cocaine and the heroin. That's the
15 way it works north of 125th Street or wherever. And typically,
16 what's being described to them is a culture with which the
17 jurors have no connection, other than the evidence they hear in
18 the courtroom.

19 MR. WHITE: That's true, your Honor. I think it's a
20 matter of degree here, is one reason. And also I think it's
21 inherent in the whole venue provision in Article III and the
22 Sixth Amendment that the right to be tried in the venue where
23 you live, where you work, where the crime occurs and where the
24 jurors will be drawn from, I think that's inherent in that very
25 principle.

17dkdata

Argument

1 THE COURT: Well, you're not making a venue argument,
2 an improper venue argument, Constitutional or otherwise, are
3 you?

4 MR. WHITE: No, I'm not, your Honor. But I think
5 those principles obtain here in Rule 21(b). That's why Rule
6 21(b) has this fairness component to it, the fairness to the
7 defendant and the interests of justice component to it.

8 THE COURT: OK. Anything else you'd like to add?

9 MR. WHITE: No, your Honor.

10 THE COURT: Thank you, Mr. White.

11 Mr. Skinner?

12 MR. SKINNER: Thank you, your Honor.

13 Your Honor, the crimes in this case were committed in
14 Mexico, Texas, Arizona, California, Florida, New York, all over
15 the United States, all over the world. And Mr. Datta ran a
16 national, international money laundering operation. And the
17 connections with New York are neither remote nor unfair for
18 this defendant in this case. He bought a significant amount of
19 perfume from this city, from this state, from this
20 jurisdiction. He could not have committed the crimes he
21 committed without that perfume as a crucial part of his scheme.
22 He got into a business up here. He had significant --

23 THE COURT: Well, the business he got into up here was
24 what exactly?

25 MR. SKINNER: The perfume business. And he got

17dkdata

Argument

1 into --

2 THE COURT: Nothing wrong with that, right?

3 MR. SKINNER: No. And we proffer that at trial we
4 intend to call cooperating witnesses from the New York area who
5 know the defendant who were in business with the defendant, who
6 had business dealings with the defendant before he moved to
7 Texas, who were familiar with the reasons why he went to Texas,
8 in their belief, to capitalize on the proximity of all this
9 narcotics cash that was sitting there on the border, and they
10 continued to deal with him.

11 THE COURT: Let's pause on that for a minute.

12 Are you telling me you are going to present evidence
13 from witnesses based up here who will say that he told him he
14 was going down there to launder drug money across the border?

15 MR. SKINNER: No, your Honor, I don't think the
16 witnesses -- and, frankly, I'm still in the process of
17 debriefing and proffering them, but I don't think they're going
18 to get up and say the defendant told us back in 2000, hey, I've
19 got to pick up camp here and move down to Texas in order to
20 capitalize on all this drug money. I think what they're going
21 to say is that they themselves were involved in the black
22 market peso exchange, that they themselves were accepting bulk
23 cash deliveries of narcotics proceeds in New York City.

24 THE COURT: Your cooperator.

25 MR. SKINNER: Our cooperator is going to say this.

17dkdata

Argument

1 And that they understood, through their dealings with
2 Mr. Datta before he left for Texas as well as after he was in
3 Texas -- because they continued to deal with him right up until
4 the time of his arrest -- that it was their belief and their
5 understanding from his communications in general and one of the
6 reasons he was down there was to take advantage of these
7 proceeds.

8 THE COURT: By what stretch of the imagination is
9 their beliefs as to his motives admissible in evidence?

10 MR. WHITE: Maybe it won't be admissible, your Honor,
11 but what I'm trying to explain -- I got a little off track.
12 What I'm trying to point out here is, the defendant had
13 significant contacts with New York, both before he left and
14 then after he moved to Texas he continued to deal with these
15 particular cooperators, he continued to buy his product up
16 here, his family moved up here, he had a driver's license that
17 he never changed, his cell phone was up here. Some of these
18 factors are more significant than others, but the point is that
19 this district, this jurisdiction, is neither remote nor
20 unfamiliar to this defendant. He's well acquainted with New
21 York City.

22 And perhaps most importantly, in the course of the
23 undercover operation, he was dealing with individuals who
24 identified themselves as being from New York and New Jersey,
25 who needed to move money that they got from up here down South.

17dkdata

Argument

1 And in the course --

2 THE COURT: Money that you're going to prove he knew
3 to be drug money?

4 MR. SKINNER: He knew to be drug money, precisely,
5 your Honor; it was represented to him to be drug money.

6 THE COURT: From New York?

7 MR. SKINNER: From -- I believe so. I don't want to
8 overstate things now, your Honor, because I'm not sure if we go
9 back and look at the recordings if the statements would
10 actually be, "I got drug money on Fifth Avenue and I've got to
11 get it down to you."

12 THE COURT: No, no, what I'm trying to find out is
13 whether the government is offering to prove that he either
14 dealt with people in New York who told him they wanted to move
15 drug money wherever the New Yorkers got the drug money, or that
16 he dealt with people for the purpose of moving drug money that
17 came from New York, either/or.

18 MR. SKINNER: The former. He dealt with people who
19 represented that they were from New York and New Jersey, who
20 represented that they needed to move drug money down South.

21 THE COURT: Where did he deal with those people?

22 MR. SKINNER: He dealt with them in Arizona, in
23 Las Vegas, where he met with them multiple times; he met with
24 them in San Diego, California; he spoke with them multiple
25 times on the phone when they were located back up here in

17dkdata

Argument

1 New York and New Jersey and they made their location to him
2 apparent. They flew down and they made a \$40,000 bulk cash
3 delivery in California.

4 I'm not sure, I think defense counsel may have
5 represented that delivery to have been made in Texas. That's
6 incorrect. The \$40,000 in cash that the undercover delivered
7 was in California. They wired money to the defendant from
8 banks in New York. It was clear to the defendant from what
9 these undercovers were telling him, that they were a
10 New York-focused operation. The defendant even told them, "I'm
11 thinking about opening up a warehouse up in New Jersey." It's
12 apparent in the conversations between them.

13 THE COURT: So the witnesses you've just referred to
14 with whom he dealt, who identified themselves in one way or
15 another as New Yorkers wanting to move drug money, were they
16 all undercovers, that is, government agents, or were some of
17 them nonagent witnesses?

18 MR. SKINNER: There were two undercover agents, both
19 of whom are government witnesses, both of whom are residents of
20 New Jersey, who were introduced to defendant by a cooperating
21 witness, who was also from the New York City area. And I don't
22 believe there are any other witnesses involved in the
23 undercover aspect of the operation. The defendant had
24 interactions with one undercover in particular, and a second
25 undercover traveled to Southern California to deliver the

17dkdata

Argument

1 \$40,000 in bulk cash proceeds.

2 Really the point I'm trying to make here is that the
3 crimes were committed all over the United States, and there was
4 certainly, in this defendant's mind, a significant connection
5 to this particular area of the country. It's not as if we're
6 plucking him out of southern Texas and bringing him to a
7 jurisdiction that he's never been to, that he had unwitting
8 contact with through some kind of wire transfer that he wasn't
9 aware of, that he doesn't know anything about, that he doesn't
10 have any connections to. To the contrary, the defendant was
11 well aware that some of his criminal activity was touching
12 New York. He was well aware that it was touching a number of
13 other jurisdictions on top of that.

14 And just when we're talking about the overall fairness
15 of whether this defendant should be tried here, as we've
16 established in our papers, and as I think the Court is well
17 aware from the bail arguments and such, this is a defendant
18 with a longstanding tie to this particular jurisdiction. So it
19 doesn't seem to us that this is a case that cries out, for
20 unfairness or in the interests of justice, for being sent
21 someplace else where the defendant happens to reside. This is
22 a man who was born in India, came to the United States, lived
23 in New York, has lived in Texas for a period of time, travels
24 widely. There's no inherent unfairness in having him up here.

25 The defendant said that he just doesn't see the

17dkdata

Argument

1 substance and the connections with the Southern District of New
2 York. We tried in our papers to explain what we think we're
3 trying to elaborate on here, but I think what matters here is
4 the substance of the defendant's arguments about why this case
5 shouldn't be tried here, and they're nonexistent. We don't
6 have any evidence from the defendant as to witnesses who are
7 unable or unwilling to travel to New York in order to testify
8 on his behalf. We don't have any evidence from the defendant
9 about whether he's financially unable to bring people here.
10 And if he were, of course he would have access to Rule 17(b)
11 and can make an application to this Court to have the
12 government bear that expense if that were actually the case.
13 There's no substance to the defendant's argument that his
14 position is somehow untenable or unfair or that things will be
15 substantively better down there.

16 On the other hand, Rule 21(b) doesn't talk about
17 fairness to defendants; it talks about fairness to the parties.
18 The word "parties" appears in there. And the rule in the case
19 law plainly contemplates fairness to the government as well as
20 to the plaintiff. And as the Court has observed, significant
21 effort has gone into the case from this district, the
22 prosecution team is up here, virtually all of the government's
23 witnesses, whether they're law enforcement, cooperators or lay
24 witnesses, with the exception of the employees from California
25 who the government may call to establish that the money was

17dkdata

Argument

1 delivered, virtually all the government's witnesses are from up
2 here. Causing us to uproot everything we have up here and
3 moving everyone down there would be a significant burden to us,
4 would be a significant expense and burden to the personnel
5 involved in trying this case.

6 Just to respond briefly to the practicalities argument
7 that the defendant raised: I don't really follow it, to be
8 totally honest with you. The documents are in electronic form,
9 they have Bates numbers on them. The original documents are in
10 our custody. They're located here in New York, they're all
11 here. So the easiest way for defense counsel to go through the
12 physical documents would be to bring the witnesses up here so
13 he could sit down with them and go through them. If he wants
14 to -- otherwise he's going -- out of court, he'd do exactly
15 what he could do if they're located in Texas, which is copy the
16 disks, send it down to them and say go to page 5067 and take a
17 look at that and tell me what it is. I'm not sure I entirely
18 follow the practicalities of the argument. Given the
19 technology of today, it's a little different than when Platt
20 was decided, back in the late '60s.

21 And the only other thing I want to emphasize is where
22 we are in this case. We have a trial set to start in a little
23 under two months. This Court wanted to have that trial even
24 earlier, but through the request of defense counsel, given the
25 volume of discovery, set a trial date further out, in

17dkdata

Argument

1 September.

2 If we were to transfer the case down to Texas now,
3 regardless of what the respective docket loads might be in the
4 Southern District of Texas versus this Court, there's just no
5 way it's actually going to happen in September. A new judge is
6 going to have to get up to speed, and, probably more
7 importantly, I would imagine defendants are going to have local
8 counsel there who's going to say, I need to get up to speed,
9 and we're going to need to get a local prosecutor up to speed.
10 Even if all of us go down, we'll want a local prosecutor from
11 the Southern District of Texas helping us out.

12 THE COURT: You'll all on both sides have to be fitted
13 for your boots.

14 MR. SKINNER: Precisely, perhaps a hat and belt
15 buckle.

16 THE COURT: And the string ties.

17 MR. SKINNER: In any event, we didn't get wind of this
18 motion until shortly before it was filed. It wasn't filed at
19 the beginning of the case. I really don't know why this isn't
20 like Judge Sotomayor's case in the spie case, where a lot has
21 happened that's involved a lot of time and energy of the Court,
22 and I think that factored into her analysis but this is a case
23 where the government is ready to try the case up here in
24 September. And if the motion to transfer is granted, it's not
25 going to happen as quickly down in Laredo, Texas, and I don't

17dkdata

Argument

1 think that that factor weighs in here.

2 In sum, I think I'm not going to go through all the
3 Platt factors. I think if you look at all of the Platt
4 factors, they either favor the government or are neutral. And
5 I don't think there's any real substance to defendant's claim
6 that he's being prejudiced, that it's unfair for him to be
7 here. And I think under those circumstances, he hasn't met the
8 burden of establishing that the interests of justice require a
9 transfer of venue. And in those circumstances the Court should
10 follow the general rule, which is reiterated in decision after
11 decision, that the case should be kept in its original
12 district.

13 THE COURT: Thank you.

14 Mr. White, anything else?

15 MR. WHITE: Yes, your Honor, if I may.

16 Just to touch on one of the last things that was
17 mentioned: This motion was actually made on May 17th,
18 approximately two months ago. So I came into the case in
19 March, your Honor, so the government has had notice since then
20 that this is something we wanted to do. And it was made then
21 because it was only then that we were able to assess the case
22 and understand it actually.

23 THE COURT: Well, you had a predecessor.

24 MR. WHITE: I don't think it ever occurred to the
25 predecessor, your Honor.

17dkdata

Argument

1 THE COURT: Well, that may be, but the fact of the
2 matter is, it certainly didn't amount to ineffective assistance
3 not to make a venue motion on his watch.

4 MR. WHITE: No. We are prepared to try the case in
5 September. We want to try the case in September. Mr. Datta is
6 detained. We think we can get on the docket very quickly in
7 Laredo. So we're not doing this to delay; it's the last thing
8 we want to do, is delay.

9 Mr. Skinner said that Mr. Datta's business was
10 international and national. And that's really not -- that's
11 kind of a mischaracterization. It was international with
12 Mexico. National? It really wasn't; it was regional. All the
13 sales were along that one border there. It's not like spy
14 factory where they were in every major city in the United
15 States or other cases like that.

16 The government talked kind of cryptically about people
17 who would say that they had dealings in New York or with
18 Mr. Datta. And I'd like to address those. One of the them was
19 a supplier; there's a cooperating witness who was a supplier,
20 who had supplied perfume to Mr. Datta's businesses for many
21 years.

22 In October of 2009, Mr. Datta came up here, met with
23 this cooperating witness to order perfume. And the cooperating
24 witness recorded that conversation because he was cooperating
25 at that time. It's one of the most boring conversations you'll

17dkdata

Argument

1 ever listen to because it's about an hour and a half long, an
2 hour and 15 minutes, is actually ordering perfume, how many
3 bottles of this, how many of that. But the cooperator and his
4 father pumped Mr. Datta about how's business going, and it
5 comes out that he does a lot of cash business, he does a lot of
6 cash business from his Mexican customers.

7 So the cooperating witness, actually his father, says
8 to him, is it drug money? He comes right out there. And
9 Mr. Datta replies -- and it's in Hindi because the father spoke
10 Hindi and he replied in Hindi -- he said, I don't know, OK. So
11 as far as these witnesses from New York saying they have
12 knowledge of him being involved in drug trafficking, it's not
13 going to happen. The other witnesses from New York are the
14 undercovers, the DEA agents. Count One is basically, your
15 Honor, the wholesale sale of perfume into Mexico, to Mexican
16 perfume distributors. Count Two is the sting operation.

17 The sting operation was born in Las Vegas when an
18 undercover was introduced to him as somebody who, first, who
19 had customers in Mexico and was looking for somebody to handle
20 his business in Mexico. The undercover later gradually moved
21 into a sting. This happened in Las Vegas. At the undercover's
22 insistence -- he said, I'd like to buy perfume in San Diego.
23 Money, \$38,000 worth, was paid for the perfume in San Diego,
24 actually San Ysidro. That money apparently obviously was
25 government money. To attribute that to New York, yes, the

17dkdata

Argument

1 undercover said in some of these conversations that he works
2 out of New York but, again, your Honor, it's so insubstantial
3 to apply to New York. That the money came from New York?
4 These are government funds, your Honor, it's not like there are
5 witnesses in New York who will say that --

6 THE COURT: I think the point is that your client, the
7 government would say, understood that it was drug money and
8 given the witnesses' statements about where the witness was
9 working out of, it was likely drug money off the streets of
10 New York. Isn't that what they would say?

11 MR. WHITE: The witness would say that?

12 THE COURT: No, the government would make that
13 argument.

14 MR. WHITE: Assume that that were true and admissible
15 as a proper argument, your Honor, that the --

16 THE COURT: It would be an inference.

17 MR. WHITE: Is that enough to try -- say that this
18 crime, 98 percent of which occurred in the Southwest, is a
19 New York-based crime?

20 THE COURT: They don't have to show it's a
21 New York-based crime.

22 MR. WHITE: No, no, but the Rule 21(b) cases, most of
23 them, a lot of them, talk about where is the nerve center of
24 the crime that was committed. It was clearly Laredo, Texas,
25 your Honor, clearly. In this day and age of mass

17dkdata

Argument

1 communications, you're going -- you could find a link to
2 probably every district in the country, you know, but where is
3 the nerve center of the crime that was committed?

4 This idea of having the bookkeeper from Laredo come up
5 to New York and stay on hand for as long as the trial so I can
6 consult with her up here about what did these records -- it's
7 so impractical, your Honor. The government has the original
8 records --

9 THE COURT: How is it impractical? I don't understand
10 that.

11 MR. WHITE: To have the people come up here to
12 New York to be on hand?

13 THE COURT: Yeah. How is it impractical?

14 MR. WHITE: It's expensive, it's expensive. It's
15 expensive --

16 THE COURT: He's paying the bookkeeper anyway, right.
17 What's a plane ticket from Laredo here?

18 MR. WHITE: But, your Honor, to have her on hand,
19 isn't that -- I mean the inconvenience to the witnesses to have
20 them come up here to do that?

21 THE COURT: Maybe she likes New York. Let's not get
22 carried away. We've all been in this business a long time. I
23 once had to take a deposition of a witness for days, as I
24 remember it, in New Mexico, on the subject of highly
25 technological subject. And I full well understood that if I

17dkdata

Argument

1 didn't have the right person with me to translate the answers
2 into English I could understand, I could be snowed and come
3 back without really getting what I went for. So I hired a
4 professor of computer science from Princeton and he came to New
5 Mexico with me for as long as it took. Now, it wasn't weeks
6 and weeks, but there it was.

7 Now, the person you are concerned about, the
8 bookkeeper, this gentleman or his companies, they're already
9 paying to work full time for him. So it's not quite as big a
10 deal really, is it?

11 MR. WHITE: We're talking about convenience, your
12 Honor, convenience, cost. To move the -- the government said
13 virtually all their witnesses are from New York. It's hard for
14 me to fathom, when they have represented in their opposition to
15 my bail motion that they are going to have witnesses who will
16 testify that the money he was receiving in Laredo was in fact
17 the proceeds of narcotics activity. Who are those witnesses?
18 The government is ignoring the Laredo side of their case by
19 telling you that it's all New York. New York is the agents.
20 The agents can testify in Laredo very, very easily. The
21 defense witnesses will be --

22 THE COURT: It will be very inconvenient for them,
23 right?

24 MR. WHITE: Yes. But the defense witnesses will be
25 predominantly from Laredo. It will be inconvenient to the

17dkdata

Argument

1 agents but that's what they do for a living, your Honor, so
2 it's not --

3 THE COURT: Bookkeepers do that for a living too.

4 MR. WHITE: Yes, your Honor, but these are civilians,
5 these are civilians, these are people with families, these are
6 people of modest circumstances, humble people. I mean to cart
7 them up here to New York is an inconvenience, and I think
8 that's what Rule 21(b) weighs -- why it weighs on the side of
9 the defendant in this instance, your Honor.

10 THE COURT: OK, anything else?

11 MR. WHITE: Not on the transfer motion, your Honor.

12 THE COURT: OK, I'm going to reserve for now on the
13 transfer motion, but I wouldn't be holding my breath.

14 OK, let's go on to the other --

15 MR. WHITE: Well --

16 MR. SKINNER: Your Honor, I apologize for
17 interjecting, but would the Court excuse Mr. Master? He's due
18 for a plea in another court right now.

19 THE COURT: Of course.

20 MR. MASTER: Thank you, your Honor.

21 (Pause)

22 THE COURT: Let me tell my reaction to your motion and
23 maybe we can save a little time.

24 MR. WHITE: The bail motion, your Honor?

25 THE COURT: Yes. And it's this: Judge Cott, if I

17dkdata

Argument

1 remember the magistrate's name -- I mean I remember the name,
2 if I remember which one it was -- ordered detention because he
3 thought your client was a flight risk. You came to me. I
4 thought he was a flight risk, and basically the reasons that I
5 thought he was a flight risk are no different today than they
6 were the last time. And I take it the thrust of your motion to
7 being that I should let him out on bail because the
8 government's case is weak. Is that about it?

9 MR. WHITE: Not exactly, your Honor.

10 THE COURT: OK.

11 MR. WHITE: Well --

12 THE COURT: I say it to give you the opportunity to
13 answer my concerns.

14 MR. WHITE: I know, I know.

15 Judge Cott -- and, your Honor, you're basically
16 working off the complaint at that stage. Defense counsel knows
17 very little more than is in the complaint and what he's heard
18 in an interview from the client. There's been no discovery,
19 there's been no opportunity yet to go through the complaint and
20 check those things out to see do they play out.

21 So, your Honor, I was thinking -- I've heard many
22 district judges say the hardest part of their job is
23 sentencing. And when you sentence, the work that goes into
24 sentencing, to get as accurate a grip of the facts as possible
25 and then determine what an appropriate sentence is, a lot of

17dkdata

Argument

1 work goes into that. But Mr. Datta's been in jail for six
2 months, he's been in jail for six months basically on the
3 allegations in the complaint. And I've been working on this
4 case now for several months, and I see big holes in the
5 government's case and that the complaint was kind of the
6 worst-case scenario for the defendant and the best-case
7 scenario for the government, taking every conceivable
8 inference, not even reasonable inferences, and drawing the
9 worst possible conclusions from it. And that's basically
10 what's briefed to your Honor and to Judge Cott. And there's
11 just so much more out there which I tried to highlight.

12 THE COURT: I appreciate everything you've said, but
13 at the end of the day, I'm dealing here with an individual who
14 is looking, in the event of conviction, at a lot of time, who's
15 been involved in this border trade for a long time, who's got
16 substantial resources, and who, it seems logical for me to
17 infer, has a lot of contacts south of the border.

18 Now, that says to me that if he perceives any real
19 risk that he's going to be convicted, a rational course of
20 action is to go across that bridge you were talking about and
21 never come back. That's my problem.

22 MR. WHITE: It just doesn't match the reality. I
23 understand, your Honor, I understand from your perspective
24 looking at it. It just doesn't match the reality. His wife
25 and two daughters are here. They flew up from Laredo to be

17dkdata

Argument

1 here today. Where's he going? What's he going to do to them?
2 His daughter is a student at NYU, his wife is trying to keep
3 that business afloat. This man has never been in trouble in
4 his life.

5 The crimes he's charged with -- your Honor, you were
6 very general when he said he has contacts in Mexico. He sure
7 does, he sure does, and these are his customers. But the last
8 time we were here on bail, it was substantial ties to the
9 Mexican drug cartel, and there's no evidence of that, your
10 Honor. Because now we know, which we didn't know at the time
11 of the previous bail arguments, exactly what the government's
12 theory is. And Mr. Datta is two steps removed from any drug
13 trafficker. He deals with his customers. Even under the
14 government's theory, the customers deal with peso brokers. The
15 peso brokers deal with narcotics traffickers, under their
16 theory. He doesn't deal with narcotics traffickers. He deals
17 with his customers. So he doesn't have contacts in Mexico
18 among drugs cartel members. It's just -- it's a theory here
19 that could have been believed at the beginning but it can't be
20 sustained now.

21 And to the government's credit, in their papers on
22 this, they say that, well, the evidence suggests that he had
23 contact with drug cartels. That's as strong a statement as
24 they make. And even if he didn't, he had contacts with
25 intermediaries of drug cartel members. Well, that's true;

17dkdata

Argument

1 that's his customers. An intermediary is two steps removed.
2 He's actually three steps removed because there are the peso
3 brokers, so he doesn't have nefarious connections in Mexico,
4 your Honor.

5 But here, in the government's response, they make this
6 proffer: The government intends to call witnesses at trial who
7 will provide direct evidence that the money at issue in Count
8 One was the proceeds of narcotics trafficking, period. Can you
9 imagine, at the original bail argument, if that's all the
10 government said -- we have witnesses who will say it. Well,
11 the magistrate judge or your Honor would say, whoa, what
12 witnesses? Who? Who are they? Are they people who worked
13 with him? Are they people they sold to? They haven't
14 elaborated on that. And I think that is the key to the case,
15 that this was drug proceeds, they have to prove it. And that's
16 why we made this motion.

17 And I think you should -- I don't think they can prove
18 it, your Honor. They can't prove -- they may be able to prove
19 that he believed it might be drug proceeds but --

20 THE COURT: That may be, but why does that mean he's
21 likely to show up for trial?

22 MR. WHITE: Because if your Honor were to determine
23 that the government's case is not strong, which is a bail
24 consideration, he certainly would feel the same way, that he
25 can be acquitted, his businesses can be restored to him, his

17dkdata

Argument

1 goods and his funds will be returned to him, and this is what
2 he wants. All this man wants is to be vindicated here, your
3 Honor. There's no hint in his whole life that he would take
4 flight here and not fight these charges.

5 The fact that he's here six months in jail, when he
6 sold perfume that was two steps or three stops removed from
7 narcotics traffickers, I think the government has a lot of
8 problems with their case, your Honor, and I just don't think
9 this man should be detained on the basis of that, without them
10 even being required to say -- they can do it in camera,
11 ex-parte, but just satisfy you that they're going to be able to
12 prove that. What they've put in their response as proof
13 doesn't prove anything, as you can see in my reply. But
14 assuming they have those witnesses, I'm out -- I don't have an
15 argument, your Honor. But I don't know they have them and you
16 don't know they have them, and nothing in their papers suggest
17 they really have them or who they are.

18 And that's all I really ask at this stage for you to
19 do, your Honor, to get a proffer from them as you would at an
20 initial bail hearing, a real proffer, as to how are you going
21 to prove that this was really -- they're saying every bottle of
22 perfume he ever sold was paid for with drug proceeds. Absurd,
23 ridiculous. But here he is six months in the can because this
24 is the government's theory.

25 THE COURT: OK, thank you.

17dkdata

Argument

1 Mr. Skinner?

2 MR. SKINNER: Your Honor, the Court has it absolutely
3 right: The defendant was a flight risk in February, he remains
4 a flight risk today. Absolutely nothing has changed with
5 regard to what makes the defendant a flight risk. All defense
6 counsel is arguing is that postdiscovery, with his own
7 defense-tilted view of the government's evidence, that for some
8 reason the case is weak and because the defendant knows the
9 case is weak and therefore he's going to stick around to try
10 the case. Defense counsel, first of all, he's just completely
11 ignored Count Two of the indictment, the sting count. The
12 sting count, which is going to be the bulk of the evidence at
13 the trial, is overwhelming. The fact that -- I don't see how
14 he can argue with a straight face that the evidence will not
15 establish beyond a reasonable doubt that the undercovers
16 represented to the defendant that they were giving him drug
17 money and that he then continued to deal with them, from when
18 he first met him in October until the day of his arrest, which
19 incidentally was here in Manhattan in January, when he traveled
20 up here to meet with them and to meet with his contacts in
21 furtherance of the money laundering conspiracy.

22 I've never, in my time prosecuting, which is not a
23 significant period of time, not nearly as long as Mr. White's
24 been defending these cases, but I have never heard as express a
25 communication by an undercover officer. He's on a recording

17dkdata

Argument

1 saying, I run kilos for the Sinaloa drug cartel. I know
2 defense counsel's position is, well, he must have been unclear
3 before if he felt the need to say that then. Well, that's not
4 the case. He hinted before -- he did what undercovers always
5 do; you never come out and be express -- but then once we felt
6 he sufficiently represented that he was dealing with narcotics
7 proceeds, we said why not just go for it, put it all out there,
8 we'll see what he does; if he throws up his hands and says,
9 well, I had no idea, I'm out of here, then that will be
10 indicative to us that this is a businessman and maybe we just
11 got it all wrong. But that's absolutely not what he did. He
12 said he sat there with the undercover, talked in great detail
13 for an hour about how he was going to wash the money for the
14 undercover, high-fiving the undercover after he said that, and
15 proceeds to then travel a couple weeks later up to New York to
16 meet with the undercover, where he further discusses money
17 laundering activity and then is arrested. So the idea that our
18 case is weak on Count Two is incorrect, which is probably
19 understating it.

20 And with regard to Count One, the defense counsel is
21 not arguing we can't prove any of the other elements. He
22 focuses on whether we can prove that it was narcotics proceeds.
23 We have proffered that we will be calling at least one witness
24 who will testify that he or she delivered what he or she knew
25 to be drug money to the defendant. I don't think we need to

17dkdata

Argument

1 proffer any more than that. I don't think this is an
2 opportunity for the defendant to just keep filing bail motions
3 in order to get a free preview of the government's case. We
4 have proffered that we can do it. I'm saying it in good faith.
5 I personally have spoken to the witness, and that witness has
6 told me what he or she did. And if the Court wants more detail
7 than that, I guess I offer to make the proffer ex parte to the
8 Court if that's not satisfactory.

9 But the bottom line is that the evidence in this case
10 is overwhelming on both counts, and nothing has changed since
11 February. This is a defendant with significant resources, both
12 personal and financial. He's facing a significant penalty if
13 he's convicted. He has every incentive to flee, and he's got
14 more opportunity to flee than most defendants who are going to
15 come into this courthouse. And for those reasons we think he
16 remains a risk of flight and should be detained for the brief
17 period of time until we have a trial in this district.

18 THE COURT: Do you happen to know whether any
19 extradition treaty we have with Mexico would permit extradition
20 for money laundering?

21 MR. SKINNER: I don't know off the top of my head,
22 your Honor. I have not looked at that.

23 THE COURT: All right, thank you.

24 Mr. White, anything in conclusion?

25 MR. WHITE: On this sting, your Honor, the sting

17dkdata

Argument

1 transaction was about \$38,000, if that were what Mr. Datta was
2 charged with, I don't think he would have been detained on the
3 basis of just that one transaction. The important thing,
4 because of the guidelines, what he would be facing if he were
5 convicted of that, I disagree with the government that they
6 have overwhelming proof on that, because the conversations that
7 Mr. Skinner referred to were after the transaction. Those are
8 after the transaction, your Honor. Before the transaction --
9 there's a telephone call that the government provided since my
10 motion was made, where this is set up to buy perfume and the
11 undercover wants to buy it in the San Ysidro store. There's no
12 suggestion in that telephone call that he's representing it to
13 be the proceeds of narcotics. It's only later that he does,
14 your Honor. So I don't think the government's case on the
15 string is nearly as strong as the government represents.

16 THE COURT: OK, thank you.

17 The bail application is denied. I again find that the
18 defendant, in all the circumstances, remains a substantial
19 flight risk and that no condition, or combination of
20 conditions, could adequately secure his presence for trial. I
21 will file an order to that effect shortly.

22 OK, I will see you in September, folks, unless I
23 decide to send this case to Texas.

24 MR. SKINNER: Thank you, your Honor.

25 * * *